IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1935 OF 2006

Maharashtra State Road
Transport Corporation. ... Appellant.
Versus.
Motiram Joma Patil and others. ... Respondents.

Shri G.S.Hegde with Shri C.M.Lokesh for the Appellant.

Shri R.R.Salvi for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 14th August, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. Admit. The learned Advocate for the Respondents waives service. Taken up for hearing forthwith.

2. An Award has been made under section 163A of the Motor Vehicle Act, 1988. The challenge in this Appeal is to the said Award. The grievance made by Shri Hegde, the learned Advocate for the Appellant is that though there was no evidence regarding the income of the deceased, the Tribunal proceeded on an erroneous footing that the income of the deceased was Rs.4,000/- per month. He submitted that for the purpose of calculating the compensation under section 163A of the said Act, notional income of Rs.1500/- per month ought to have

been taken by the Tribunal and thereafter applied the formula under section 163A of the said Act. He submitted that the interest at the rate of 12% in default could not have been awarded by the Tribunal. Shri Salvi appearing for the Respondents submitted that there is no error committed by the Tribunal by taking the income of the deceased at Rs.4000/- per month.

3. I have considered the submissions. The case made out by the Respondents was that at the time of death the deceased was studying in 12th standard. The case made out was that the deceased was working as a cleaner on a truck owned by one Bhalchandra and was drawing a salary of Rs.3,000/- per month. It is apparent that the income certificate on which reliance was placed was not proved by examining the alleged employer of the deceased. In the absence of any evidence led by examining the employer it is very difficult to believe that the deceased, who was a student of Science faculty of 12th standard, was working as a cleaner and was drawing income. Thus the Tribunal has committed an error by taking the income of the deceased at Rs.4000/- per month. In fact the income should have been taken as Rs.1500/- per month being the notional income prescribed in the structured formula. In this case the multiplier of 16 as per the structured formula will have to be adopted. In view of this I

requested the learned Counsel appearing for the Appellant to make necessary calculations by applying multiplier of 16 and by taking notional income of Rs.1500/- per month. The figure of compensation which is payable as per the formula comes to Rs.1,64,500/-. So far as the correctness of the calculation of the said amount of compensation of Rs.1,64,500/- is concerned, there is no dispute between the learned Counsel appearing for the parties. In my view under section 163A of the said Act, the said amount deserves to be granted as compensation in substitution of the compensation fixed by the Tribunal.

4. There is a merit in the submission of Shri Hegde that interest could have been awarded only at the rate of 7-1/2% from the date of the petition till final award. However, the Tribunal has stated that in case the amount of compensation is not paid by the Appellant within a period of two months, the interest at the rate of 12% per annum will be payable. This part of the Award appears to be erroneous and needs to be modified.

5. Hence the Appeal is disposed of by the following order:

i) The impugned Judgment and Award is modified and the operative part of the Award is substituted

by the following:

. "(a) The Petition is partly allowed.

. (b) The opponent do deposit an amount of Rs.1,64,500/- (Rupees One lakh Sixty-four thousand five hundred only) inclusive of the amount of no fault liability, if any, together with interest thereon at the rate of 7-1/2% per annum from the date of registration of the claim petition till the date of payment.

. (c) 50% of the amount of compensation be invested in fixed deposit in the joint names of the Claimants in any nationalised bank for a period of 3 years and the remaining amount shall be paid to the Claimants by a demand draft. The Claimants will be entitled to withdraw the interest which is accrued on the fixed deposit."

ii) If the amount deposited by the Appellant is sufficient to comply with the Award as passed above, there will be no question of any deposit by the Appellant. However, if the amount is not sufficient, the balance amount will be deposited by the Appellant within a period of six weeks from today. If excess amount is deposited by

the Appellant, the Tribunal will permit the Appellant to withdraw the excess amount after hearing the Claimant.

iii) No order as to costs.

iv) The parties will act on an authenticated copy of this order.

Judge.